



Agenda Item Number: \_\_\_\_\_

## BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS

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**Meeting Date:** August 22, 2006

**Department:** Zoning, Building & Planning **Staff Contact:** Sanford Fish, Director

**TITLE:** Remand from Court of Appeals

CSU-30001 -- On remand from the New Mexico Court of Appeals, the Board of County Commissioners will consider an amendment to the Special Use Permit to allow expansion of a construction & debris landfill on 14 tracts of land in Sections 20, 29 & 30, T9N, R2E, located at 5816 Pajarito Road SW, zoned A-1, containing approximately 140 acres.

### SUMMARY:

The Board of County Commissioners approved Southwest Landfill's request for expansion on November 18, 2003, with the findings and conditions shown in attachment 1. The decision was appealed to district court and the court overruled the Board in accordance with the decision in attachment 2.

Southwest Landfill appealed the district court decision to the New Mexico Court of Appeals. This resulted in the Court of Appeals remanding the case back to the Board of Commissioners to interpret the definition of 'crucial area' as provided in the Groundwater Protection Policy and Action Plan (GPPAP). In remanding the case the Court of Appeals stated:

The definitional section contained in the GPPAP, particularly the determination of what "area" is considered to be, presents a mixed issue of law and fact. The GPPAP's stated rationale for the designation of crucial areas, set forth earlier in this opinion, provides a legal framework for deciding any site specific "area" definition, but this involves a fact-intensive inquiry that must be set forth in the record. In the absence of such findings on the issue, we find it necessary to remand, after which, if the result is the same, the district court may revisit the "crucial area" issue and the other grounds Respondents raised in their appeal to that court."

### ATTACHMENTS:

1. BCC Notice of Decision November 20, 2003
2. District Court decision November 19, 2003
3. Court of Appeals decision February 2, 2006
4. Administrative record of the case